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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 140113035-5354-01]

RIN 0648-XD082

Pacific Island Fisheries; 2014-15 Annual Catch Limits and Accountability Measures; Main Hawaiian Islands Deep 7

Bottomfish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed specifications; request for comments.

SUMMARY: NMFS proposes to specify an annual catch limit (ACL) of 346,000 lb for Deep 7 bottomfish in the main Hawaiian Islands (MHI) for the 2014-15 fishing year. If the ACL is projected to be reached, NMFS would close the commercial and non-commercial fisheries for MHI Deep 7 bottomfish for the remainder of the fishing year. The proposed specifications and fishery closure support the long-term sustainability of Hawaii bottomfish.

DATES: NMFS must receive comments by *[insert date 15 days after date of publication in the **FEDERAL REGISTER**]*.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2013-0174, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0174>, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd. Bldg. 176, Honolulu, HI 96818.

Instructions: NMFS may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, NMFS PIR Sustainable Fisheries, 808-725-5176.

SUPPLEMENTARY INFORMATION: The bottomfish fishery in Federal waters around Hawaii is managed under the Fishery Ecosystem Plan for the Hawaiian Archipelago (Hawaii FEP), developed by the Western Pacific Fishery Management Council (Council) and implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The regulations at Title 50, Code of Federal Regulations, Part 665 (50 CFR 665.4) require NMFS to specify an ACL for MHI Deep 7 bottomfish each fishing year, based on a recommendation from the Council. The Deep 7 bottomfish are onaga (*Etelis coruscans*), ehu (*E. carbunculus*), gindai (*Pristipomoides zonatus*), kalekale (*P. sieboldii*), opakapaka (*P. filamentosus*), lehi (*Aphareus rutilans*), and hapuupuu (*Epinephelus quernus*).

NMFS proposes to specify an ACL of 346,000 lb of Deep 7 bottomfish in the MHI for the 2014-15 fishing year. The Council recommended the ACL at its 160th and 161st meetings held in June and October 2014, respectively. The proposed specification is identical to the ACL that NMFS specified for the past three consecutive fishing years (i.e., 2011-12, 2012-13, and 2013-14). NMFS monitors Deep 7 bottomfish catches based on data provided by commercial fishermen to the State of Hawaii. If NMFS projects the fishery will

reach this limit, NMFS would close the commercial and non-commercial fisheries for MHI Deep 7 bottomfish for the remainder of the fishing year, as an accountability measure (AM). In addition, if NMFS and the Council determine that the final 2014-15 Deep 7 bottomfish catch exceeds the ACL, NMFS would reduce the Deep 7 bottomfish ACL for the 2015-16 fishing year by the amount of the overage. The fishery did not attain the specified ACL in 2011-12, 2012-13, or 2013-14, and NMFS does not anticipate the fishery will attain the limit in the current fishing year, which began on September 1, 2014, and ends on August 31, 2015.

The Council recommended the ACL and AMs based on a 2011 NMFS bottomfish stock assessment, and in consideration of the risk of overfishing, past fishery performance, the acceptable biological catch (ABC) recommendation from its Scientific and Statistical Committee (SSC), and input from the public. The 2011 NMFS bottomfish stock assessment estimates the overfishing limit (OFL) for the MHI Deep 7 bottomfish stock complex to be 383,000 lb. The proposed ACL of 346,000 lb is equal to the SSC's ABC recommendation, and is associated with a 41 percent probability of overfishing. This risk level is more conservative than the 50 percent risk threshold allowed under NMFS guidelines for National Standard 1 of the Magnuson-Stevens Act.

The Council also considered the results of a NMFS draft 2014 stock assessment update that used the previous 2011 stock assessment's methods for data analysis, modeling, and stock projections, with one improvement--it included the State of Hawaii's commercial marine license (CML) data as a variable to standardize catch-per-unit of effort (CPUE) from 1994 to 2013. The State began issuing CMLs uniquely and consistently to individuals through time starting in 1994. Therefore, beginning in 1994 the CML number assigned to an individual has remained the same, allowing NMFS to improve CPUE standardization from that year onward. However, the Council did not base its ACL recommendation on the 2014 assessment update because the Council had a number of questions and concerns regarding the application of the new CPUE standardization methods. The Council also recommended the 2014 assessment be independently reviewed.

In December 2014, PIFSC contracted the Center for Independent Experts (CIE) to review a final draft of the 2014 stock assessment update. The CIE panel found that including individual CML data as a variable to standardize CPUE over time was an improvement over the method used in the 2011 stock assessment. However, the CIE panel had strong reservations regarding the quality of input catch

data and CPUE index of abundance used in both the 2011 and 2014 stock assessments. Specifically, the panel raised concern about the pre-1990 data for CPUE calculation and estimates of unreported catch.

Given the concerns with the incomplete effort information, the CIE panel concluded that the 2014 stock assessment had serious flaws that compromised its utility for management. In particular, the CIE panel noted that because the 2014 stock assessment was an update only, and required improvements in the index and the population model, the science reviewed in the 2014 stock assessment is not considered the best available. The reports of the CIE reviewers are available on NMFS website at <http://www.st.nmfs.noaa.gov/science-quality-assurance/cie-peer-reviews/cie-review-2015>.

In March 2015, the NMFS Pacific Island Fisheries Science Center (PIFSC) outlined the reasons why the fisheries data in the 2014 assessment produced results that the CIE panel advised were not ready for management application, and identified two ways in which the fisheries data can be improved for future application in the new CPUE standardization method, as follows:

1. Although catch per day fished is the best available CPUE that is available continuously over the whole time

series (1949-2013), it may not be the best available over the most recent time series (1994-2013). If the time series is to be split with CPUE issues addressed differently before and after the split, one could also analyze and include detailed effort data that has been collected only for the last dozen years. These data could strongly influence recent trends. Because it is a complex undertaking, PIFSC did not see this as work that could be done as a simple update in 2014.

The use of CPUE defined as catch per day fished is subject to great criticism, and one way to address this is by using details about hours and numbers of lines and/or hooks used by fishermen over the last dozen years. Only inexplicit, undescribed differences among fishermen linked through time were applied to the recent stanza (1993-2013) in the 2014 CPUE standardization. Using the recent effort detail would still allow differences between individual fishermen to be standardized, and also allow changes in effort details through time, to be addressed. Both were factors of great concern to the reviewers. Differences among areas and seasons and other such factors that can be applied throughout the whole time series have remained part of the CPUE standardization in both 2011 and 2014.

2. Further efforts could be made to apply the CPUE standardization to account for differences among fishermen to more data using various exploratory methods and other data sets. The 2014 assessment overlooked a compilation of confidential non-electronic records held by the State of Hawaii that may help to link fishermen identities back through an earlier stanza of time.

Although the CIE panel noted the improvement in catch rate standardization in the 2014 stock assessment compared to 2011, it had strong reservations regarding the input catch data in both stock assessments. However, because it is a complex undertaking, PIFSC cannot improve the assessment for MHI Deep 7 bottomfish in the ways described above for the current fishing year.

PIFSC believes that a simpler update of the 2011 assessment using data from the three most recent years available (i.e., 2011-2013) provides the best scientific information available for management. However, this information was not available at the June and October 2014 SSC and Council meetings when these bodies provided their respective ABC and ACL recommendations to NMFS for the ongoing fishing year. Moreover, because the 118th SSC and the 162nd Council were scheduled to meet starting on March 10 and March 16, 2015, respectively, there was insufficient

time to publish a notice in the **Federal Register** revising the meeting agendas to include an action item to revisit the SSC and Council's 2014-15 ABC/ACL recommendation of 346,000 lb.

While NMFS will add this topic as an action item to be discussed at the June 2015 SSC and Council meetings, it is unlikely NMFS could implement a revised ABC/ACL recommendation for the 2014-15 fishing year, as the season will end on August 31, 2015. The National Standard 2 Guidelines, 50 CFR 600.315(a)(6)(v), recognize that data collection is a continuous process, and that new information that cannot be considered in decision-making may be reserved for use in subsequent updates. For these reasons, NMFS proposes to implement the recommended ACL of 346,000 lb for the 2014-15 fishing year. NMFS will request the SSC and Council to consider in June 2015 the new information when recommending an ABC and ACL for the 2015-16 fishing year, which begins on September 1, 2015.

NMFS does not expect the proposed ACL and AM specifications for 2014-15 to result in a change in fishing operations or other changes to the conduct of the fishery that would result in significant environmental impacts. After considering public comments on the proposed ACL and AMs, NMFS will publish the final specifications.

To be considered, NMFS must receive any comments on these proposed specifications by [*insert date 15 days after date of publication in the FEDERAL REGISTER*], not postmarked or otherwise transmitted by that date.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator for Fisheries has determined that this proposed specification is consistent with the Hawaii FEP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This action is exempt from review under Executive Order 12866.

Certification of Finding of No Significant Impact on Substantial Number of Small Entities

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that these proposed specifications, if adopted, would not have a significant economic impact on a substantial number of small entities. A description of the action, why it is being considered, and the legal basis for it are contained in the preamble to these proposed specifications.

NMFS proposes to specify an annual catch limit (ACL) of 346,000 lb for Main Hawaiian Islands (MHI) Deep 7 bottomfish for the 2014-15 fishing year, as recommended by the Western Pacific Fishery Management Council (Council). NMFS monitors MHI Deep 7 bottomfish catches based on data provided by commercial fishermen to the State of Hawaii. If NMFS projects the fishery to reach this limit, NMFS, as an accountability measure (AM), would close the commercial and non-commercial fisheries for MHI Deep 7 bottomfish for the remainder of the fishing year. The proposed ACL and AM specifications are identical to those that NMFS implemented for the past three consecutive fishing years, (i.e., 2011-12, 2012-13 and 2013-14). The fishery did not reach the ACL in any of those past three fishing years, and NMFS does not expect the fishery to reach the ACL in the 2014-15 fishing year, which began on September 1, 2014 and will end on August 31, 2015.

This rule would impact vessels in the commercial and non-commercial fisheries for MHI Deep 7 bottomfish. In the previous fishing year (2013-14), 419 fishermen reported landing 309,485 lb of Deep 7 bottomfish. On June 12, 2014, the Small Business Administration issued an interim final rule revising small business size standards (79 FR 33647). The rule increased the size standard for Finfish Fishing to

\$20.5 million. Based on available information, NMFS has determined that all vessels in the commercial and non-commercial fisheries for MHI Deep 7 bottomfish are small entities under the Small Business Administration's definition of a small entity. That is, they are engaged in the business of fish harvesting, independently owned or operated, not dominant in their field of operation, and have annual gross receipts not in excess of \$20.5 million, the small business size standard for finfish fishing. Therefore, there would be no disproportionate economic impacts between large and small entities. Furthermore, there are would be no disproportionate economic impacts among the universe of vessels based on gear, home port, or vessel length.

As for the revenues earned by Deep 7 bottomfish fishermen, State of Hawaii records report 343 of the 419 fishermen sold their Deep 7 bottomfish catch. These 343 individuals sold a combined total of 269,571 lb (87% of reported catch) at a value of \$1,798,713. Based on these revenues, the average price for MHI Deep 7 bottomfish in 2013-14 was approximately \$6.67/lb. NMFS assumes that the remaining 76 commercial fishermen either sold no fish or the State of Hawaii reporting program did not capture their sales.

Assuming the fishery attains the ACL of 346,000 in 2014-15, using the 2013-14 average price of \$6.67, the potential fleet wide revenue during 2014-15 is expected to be \$2,307,820 (\$2,007,803 under the assumption that 87% of catch is sold). If the same number of fishermen sell MHI Deep 7 bottomfish in 2014-15 as in 2013-14, each of these 343 commercial fishermen could potentially sell an average of 1,008.8 lb (878.6 lb if 87% of potential catch is sold) of MHI Deep 7 bottomfish valued at \$6,728.34 (\$5,860.33 if 87% of potential catch is sold) per individual.

In general, the relative importance of MHI bottomfish to commercial participants as a percentage of overall fishing or household income is unknown, as the total suite of fishing and other income-generating activities by individual operations across the year has not been examined.

In terms of scenarios immediately beyond the 2014-15 fishing year, three possible outcomes may occur. First, if fishery does not reach the ACL in 2014-15, the ACL could remain the same for the 2015-16 fishing year. Second, if the fishery exceeds the ACL for the 2014-15 fishing year, NMFS would reduce the Deep 7 bottomfish ACL for the 2015-16 fishing year by the amount of the overage. The last possible scenario is one where NMFS would prepare a new

stock assessment or update that NMFS and the Council would use to set a new 2015-2016 ACL (without inclusion of any overage, even if catch exceeds ACL for the 2014-15 fishing year).

Even though this proposed specification would apply to a substantial number of vessels, i.e., 100 percent of the bottomfish fleet, NMFS does not expect the rule will have a significantly adverse economic impact to individual vessels. Landings information from the 2013-14 fishing year, and from the catch to date in the 2014-15 fishing year, suggest that Deep 7 bottomfish landings are not likely to exceed the ACL proposed for 2014-15.

Therefore, pursuant to the Regulatory Flexibility Act, this proposed action would not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 15, 2015.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

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